

CHARLES J. SMITH.

JUNE 3, 1910.—Ordered to be printed.

Mr. DU PONT, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany S. 7648.]

The Committee on Military Affairs, to whom was referred the bill (S. 7648) to correct the military record of Charles J. Smith, reports the same and recommends that it be passed with the following amendment:

Amend the title so as to read, "A bill for the relief of Charles J. Smith."

During the Sixtieth Congress a bill (S. 6586) for the relief of Charles J. Smith passed the Senate but failed to be considered in the House of Representatives.

During the present session of Congress another bill (S. 5752) for the relief of this soldier was favorably reported to the Senate, passed by the Senate, favorably reported to the House of Representatives, and passed by the House. The bill was presented to the President, but was returned to the Senate without his approval, together with the following veto message (S. Doc. No. 472, 61st Cong., 2d sess.):

To the Senate:

I return herewith, without approval, Senate bill No. 5752, entitled "An act to correct the military record of Charles J. Smith," for the reasons stated in the following report of The Adjutant-General of the Army:

"The facts in the case of Charles J. Smith, for whose relief the accompanying bill (S. 5752, 61st Cong., 2d sess.) was passed, are fully set forth in the statement made by this office April 16, 1908, and printed in the inclosed Senate Report No. 255, Sixty-first Congress, second session.

"The bill is objectionable because, if approved, it will require that, for all purposes that are controlled by the laws of the United States, Charles J. Smith shall be held and considered to have been honorably discharged as a private from Company F, Third New Jersey Volunteer Cavalry; but it is a fact that Charles J. Smith, referred to in the bill, never joined that company and that he was not honorably discharged therefrom. On the contrary, it appears that when ordered to join the regiment he failed to do so, and that he absented himself without authority and was never under military control after January 19, 1865, and was not discharged from service honorably or otherwise. In addition to this, the approval of this bill will require the alteration of historical records that should be kept inviolate. If approved, the bill will also require the issuance of a certificate of honorable discharge in the case of a soldier who, as a matter of fact, was not discharged, honorably or

otherwise, from the military service. It is impossible to discharge Smith honorably now, because both he and the organization from which it is proposed to discharge him passed out of the military service of the United States and beyond military control more than forty years ago, and to issue a certificate to show that he is now, or was at some previous time, honorably discharged from the military service of the United States would be to issue a false certificate.

"Moreover, the bill, if approved, would credit Charles J. Smith with service in Company F, Third New Jersey Volunteer Cavalry, from January 19, 1865, to August 1, 1865, that was performed by another soldier in that organization, thus in effect depriving the other soldier of credit for service honorably and faithfully performed.

"If it is desired to afford relief in this case by legislation it is easily possible, without any alteration of historical records, and without the issuance of a discharge certificate that is contrary to the fact, and without depriving an honorably discharged soldier of the credit of service performed by him, to confer upon Charles J. Smith, or any other person claiming under him, any right or benefit to which he or such other person would have been entitled if it were a fact that he actually was honorably discharged from the military service of the United States. If, as is presumably the case, it is desired to give him, or some other person claiming under him, a pensionable status, of which he or such other person is now deprived by reason of the fact that he was not honorably discharged, that object can be accomplished with certainty, without requiring any alteration of records, and without the issue of an incorrect discharge certificate, and without doing injustice to another soldier, by enacting a law providing as follows:

"That in the administration of the pension laws Charles J. Smith, who was a private, unassigned, Third New Jersey Volunteer Cavalry, shall hereafter be held and considered to have been honorably discharged from the military service of the United States as a member of said organization on the nineteenth day of January, eighteen hundred and sixty-five."

WM. H. TAFT.

THE WHITE HOUSE, April 4, 1910.

[S. 5752. Sixty-first Congress of the United States of America; at the second session, begun and held at the city of Washington on Monday, the sixth day of December, one thousand nine hundred and nine.]

An act to correct the military record of Charles J. Smith.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Charles J. Smith shall hereafter be held and considered to have been honorably discharged as a private in Company F, Third Regiment New Jersey Volunteer Cavalry, as of date August first, eighteen hundred and sixty-five, and that the Secretary of War be, and he is hereby, authorized and directed to issue to said Charles J. Smith an honorable discharge as of that date: *Provided*, That no pay, bounty, or other emoluments shall accrue or become payable by virtue of the passage of this act.

J. G. CANNON,

Speaker of the House of Representatives.

J. S. SHERMAN,

Vice-President of the United States and President of the Senate.

I certify that this act originated in the Senate.

CHARLES G. BENNETT, *Secretary.*

It will be seen that the President's veto is based upon the official report of the War Department dated April 4, 1910, but a previous and more detailed report of the War Department under date of April 16, 1908, gives much fuller information and is therefore appended:

Case of Charles J. Smith, alleged late of Company F, Third New Jersey Cavalry Volunteers.

It is shown by the official records that one Charles J. Smith was enrolled December 31, 1863, and was duly mustered into the service as a private in Company F, Third New Jersey Cavalry Volunteers; that he was appointed corporal in the company, and that he was mustered out of service as such July 15, 1865.

Inasmuch as the official records show that the soldier mentioned above was honorably discharged the service, it seems probable that the proposed measure relates to some other man of that name, and in this connection it is deemed proper to state that one Charles J. Smith, of Dover, Del., has made application to this department for a discharge certificate, alleging at first that he was a member of Company D or Company E, Third New Jersey Cavalry, and afterwards declaring that he was a private in Company F, Third New Jersey Cavalry, and that he had previously rendered service in the One hundred and seventy-ninth Pennsylvania Infantry Volunteers.

The official records show that one Charles J. Smith, who, it is stated on the records, previously served in Company B, One hundred and ninety-seventh Pennsylvania Infantry, was 19 years of age at the date of his enlistment; 5 feet 3 inches high; born in Philadelphia; by occupation a farmer, and of dark complexion, eyes, and hair; was enrolled December 30, 1864, at Camden, N. J., and was mustered in on the same day as a private for service in the Third New Jersey Cavalry Volunteers; that he was received at the New Jersey draft rendezvous December 31, 1864, and forwarded to the Third New Jersey Cavalry January 6, 1865, and that he was received at Remount Camp, Pleasant Valley, Md., January 6, 1865, where he appears to have been stationed until January 19, 1865, when ordered to join the regiment. However, nothing has been found of record in this department to show that this man ever joined the Third New Jersey Cavalry Volunteers, or that he was ever assigned to Company F or to any other company of that regiment, nor do the records afford any information concerning his whereabouts or status after January 19, 1865, or to show that he was ever discharged the service as a member of the Third New Jersey Cavalry Volunteers.

Applying to this department for a certificate of honorable service, Charles J. Smith, a resident of Dover, Del., testified in 1891, as follows:

"That he is the identical Charles J. Smith who was a private in Company D or E, he thinks, in the Third Regiment of New Jersey Cavalry, and served as follows:

"The day after enlistment I was sent with other recruits by railroad to Trenton, N. J. I was then sent with the other recruits to the front in the Shenandoah Valley—was in the battles of Waynesboro, Fort Jackson, and in several skirmishes; finally arrived at Richmond, Va., and was there when the war closed. That he was discharged on or about the — day of —, 1865, either at Richmond or Winchester, in the State of Virginia; that his discharge certificate was lost (or destroyed) 'without privity or procurement' of the applicant about three weeks after he was discharged, during 1865, at Darby, in the State of Pennsylvania, under the following circumstances:

"That one evening, about three weeks after I returned home, I visited an ice-cream saloon, and had my discharge on my person. The next morning I found that it was lost, and has never to my knowledge been found."

Smith again testified on June 14, 1906, declaring as follows:

"That he was a private in Company F, Third Regiment New Jersey Volunteer Cavalry; that he was enlisted in said company and regiment on or about the 30th day of December, A. D. 1864, in the county of Camden and State of New Jersey, and served as follows:

"He served with his command up to the time of the close of the war and took part in the battle of Waynesboro, Va., in March, 1865, and was mustered out in the neighborhood of Washington some time in August, 1865; he can not now remember the exact time or place of his muster out; that some of the officers and soldiers of the company were as follows, namely:

Names.	Last address.
Capt. Alexander A. Yard	Freehold, N. J.
First Lieut. Henry V. Vanness	Newark, N. J.
First Lieut. Michael T. Deyer	83 Third place, Brooklyn, N. Y.
Second Lieut. Joseph H. Holmes	Cape May Court House, N. J.
Q. M. Sergt. Joseph D. Brooks	Belleville, N. J.
Corpl. Edward J. Wood	Newark, N. J.
Corpl. John McNeil	Do.

"That he was discharged on or about the — day of August, 1865, near Washington, D. C.; that his discharge certificate was lost without the privity or procurement of the applicant, within two weeks from his discharge, at Darby, in the State of Pennsylvania; he was in the possession of the said discharge at the time he arrived

at Darby, which was soon after his discharge, but in some unaccountable way it was lost, and he has never been able to find or discover the same, although he at or about the time used every effort to that end; that he has made diligent search for the said discharge and has been unable to recover it, and has no knowledge of its present whereabouts."

Once more testifying, he declared, August 27, 1906, as follows:

"That he served in the One hundred and seventy-ninth Regiment of Pennsylvania Infantry for an enlistment of one hundred days and was honorably discharged in November, 1864.

"That on December 30, 1864, he enlisted in the Third New Jersey Cavalry at Camden, N. J., and on the 31st day of December, 1864, he proceeded to Trenton and was mustered into the service and was there transferred to a remount camp near the city of Baltimore, in the State of Maryland.

"That from thence he, together with other recruits, was taken by a lieutenant of the said regiment, the name of whom he does not now recall, to the headquarters of the said regiment in the valley of Virginia—he thinks at or near Winchester.

"That he was with the said regiment and participated in the battle of Waynesboro, Va., on the 28th day of February, 1865; that after said battle he was sent to the rear with the prisoners then captured from General Early at said battle; that he remained in the rear of the army for about two weeks, when he rejoined said regiment and served with it until mustered out in the vicinity of Washington in the spring of 1865.

"That he does not know the date of said discharge, for the reason that his discharge was lost soon after he returned to his old home at Darby, Pa.; he does not recall the amount of his final payment nor when he was paid, nor the paymaster who paid him, all of which, he states, was indorsed upon the said discharge so lost by him.

"That at the time that he was mustered in at Trenton, N. J., a large sum of money consisting of a bounty was paid to him, but that when he arrived at the said remount station the majority or nearly all of it was taken from him by some one in authority with the understanding that it would be returned to him at the end of his service, but that up to this time no part of it whatever has been paid back to him."

Capt. John F. Tomlin, aged 65 years, a resident of Salem, N. J., testified August 28, 1906, as follows:

"That while a first lieutenant he was in command of Third New Jersey Cavalry. That on or about the last day of December, 1864, or early in January, 1865, he left the headquarters of the said regiment, which was at or near Winchester, Va., and proceeded to remount camp near Harpers Ferry, Md., a remount station in the State of Maryland, where there was delivered to him a number of recruits, among whom was one Charles J. Smith, who enlisted in the said regiment on the 30th day of December, 1864, at Camden, N. J., and from there forwarded to the said remount station.

"That he delivered the said Charles J. Smith to the said regiment on or about the 19th day of January, 1864; that the said Charles J. Smith was assigned to Troop F of the said regiment, and fought in the fight at Waynesboro, Va., on the 28th of February, 1865; that after said fight the said Charles J. Smith went back from the front with a lot of prisoners, in number about 1,500, captured at said fight from the command of General Early.

"That in the course of two weeks the said Charles J. Smith rejoined his command and was present with the said command from that time until its mustering out at or near the city of Washington, D. C.

"That the said Charles J. Smith was the third of the said name, there being a Charles Smith and a Charles J. Smith, both of whom had enlisted in said regiment at some time prior to the enlistment of the said Charles J. Smith No. 3, who enlisted on December 30, 1864.

"That he has not seen the said Charles J. Smith for many years since his said discharge, until the 17th day of August last passed, when he met the said Charles J. Smith in the city of Camden and State of New Jersey, and upon the said meeting he recalls clearly and without question the fact that he was the same recruit Charles J. Smith whom he took from the said remount station in the State of Maryland and delivered to the said Third New Jersey Cavalry at or near Winchester, in the State of Virginia, on or about the said 19th day of January, 1865, and that he recalls clearly the fact that the said Charles J. Smith went back with the said prisoners and afterwards, within about two weeks, rejoined his command, then proceeding toward Richmond, and served from thence on until the regiment was mustered out and discharged in the vicinity of Washington, D. C., on August 1, 1865."

It is shown by the records that Company F, Third New Jersey Infantry Volunteers, was mustered out of service August 1, 1865, at Washington, D. C., but, as pre-

viously stated, nothing whatever has been found of record to show that the Charles J. Smith who was enrolled December 30, 1864, ever joined that company or any other company of the regiment, and, as nothing has been found of record to show that he was ever discharged from service as a member of the organization in question, the department has been constrained to deny the application for a certificate of honorable service, on the ground that the official records do not show that he served in the regiment mentioned or was discharged as a member thereof.

Respectfully submitted.

F. C. AINSWORTH,
The Adjutant-General.

WAR DEPARTMENT,
The Adjutant-General's Office, April 16, 1908.

THE SECRETARY OF WAR.

Your subcommittee's favorable action is based upon the undisputed facts that Charles J. Smith was enrolled in Company B, One hundred and ninety-seventh Pennsylvania Volunteer Infantry and that he was honorably mustered out therefrom upon the expiration of service; that he was enrolled in the Third New Jersey Cavalry on December 30, 1864, and served until January 19, 1865, and that he was not at any time subsequently reported as absent without authority from that regiment, but that the records simply make no mention of him after that date.

In support of the affidavit of Charles J. Smith, Capt. John F. Tomlin, formerly captain of the Third New Jersey Volunteer Cavalry, a man of very high character and excellent military and civil record, made the following statement, on the 5th of May, 1910, before Senators du Pont, Briggs, and Johnston:

There was not a Smith in Company F until he (Charles J. Smith) came; he was never there when the other Smith (Charles A. Smith) was there. The latter, who is now in Philadelphia, was wounded at the battle of Winchester on the 17th of August, 1864, lost his arm, and was discharged. In December here comes this Charles J. Smith under consideration and served right straight through and knows all about these things, clean through the war. I have no doubt about this Mr. Smith at all. There are a great many things that happened during the war that he knows all about, and that he could not have known in any other way.

Captain Tomlin then related an incident of the war which occurred on a moonlight night in the month of February, at which time Custer's division, to which the Third New Jersey Cavalry belonged, was sent across to a place called Warfield; he told of the difficulties which the division encountered on their march; how the horses broke through the crust of the snow which covered the ground, and how one of the horses was lost; how many of the men fell into the stream which they had to cross, and how several were saved by Major McClellan, who swam to their rescue. All of the details of this march, Captain Tomlin said, are remembered by Mr. Smith, and the details could not be in the memory of anyone who was not actually present at the time.

Captain Tomlin further stated to the above-named Senators that as he and Mr. Smith were coming to Washington on the 5th of May, 1910, he began to sing a song which only the soldiers sang in camp. As soon as Mr. Smith heard the song he turned to Captain Tomlin and said he remembered the song and then repeated some of the words, which would indicate further that Mr. Smith had been closely connected with the events of those times.

Captain Tomlin stated that Company F, being very much reduced in numbers, was consolidated for tactical purposes with Company M,

and how he had great difficulty in keeping the rolls; how the rolls were very much confused, and how errors were liable to and perhaps did occur in attempting to readjust them.

The fact that Company F was temporarily consolidated with Company M probably explains the confusion in Charles J. Smith's mind as to the company to which he really belonged.

The records of The Adjutant-General's office show that Charles A. Smith, heretofore referred to, was mustered into service on January 12, 1864, as a private in Company F of the Third New Jersey Cavalry, and that he was honorably discharged the service March 16, 1865, as a private by reason of disability.

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